

*Suffolk Superior Civil # 04-2959* ✓

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

**04 11676 PBS**  
CHILDREN'S HOSPITAL  
CORPORATION,

Plaintiff,

v.

KINDERCARE LEARNING CENTERS,  
INC., BLUE CROSS BLUE SHIELD OF  
MASSACHUSETTS, INC., and  
REGENCE BLUE CROSS BLUE  
SHIELD OREGON

Defendant.



HEREBY ATTEST AND CERTIFY ON 04-09  
THAT THE FOREGOING DOCUMENT IS A FULL, TRUE  
AND CORRECT COPY OF THE ORIGINAL ON FILE  
IN MY OFFICE IN MY LEGAL CUSTODY.  
CLERK, U.S. DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
BY: *[Signature]*

NOTICE OF REMOVAL BY KINDERCARE

TO: The Honorable Judges  
Of the United States District Court  
For the District of Massachusetts

Pursuant to 28 U.S.C. § 1331, 1446 and 29 U.S.C. § 1132(e), Defendant,

KinderCare Learning Center ("defendant"), hereby removes this action from the Superior Court of Suffolk County, Commonwealth of Massachusetts, to this Court. The grounds for removal are:

1. This is a civil action brought by the plaintiff, Children's Hospital Corporation (hereinafter "plaintiff"), in the Superior Court of Suffolk County, Commonwealth of Massachusetts (Civil Action No. 04-2959). Copies of the Summons and Complaint were served upon defendant on July 7, 2004. Copies are attached in accordance with 28 U.S.C. § 1446 (a).

2. Suffolk County, Massachusetts, the place where this action was originally filed, is within the geographic boundaries of the United States District Court for the District of Massachusetts. 28 U.S.C. § 101.
3. Defendant desires to exercise its rights under the provisions of 28 U.S.C. § 1441, et seq., to remove this action from the Superior Court of Suffolk County, Commonwealth of Massachusetts.
4. This action filed by plaintiff in state court is removable to this Court as an action over which the District Courts of the United States have been given original jurisdiction, in that the purported causes of action “relate to” an employee benefit plan governed by the Employment Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001 et seq. and are completely preempted. See Aetna Health, Inc. v. Davila, 592 U.S. \_\_ Slip. Op. at 4-5 (2004).
5. Defendant Blue Cross Blue Shield of Massachusetts, Inc. and Regence Blue Cross Blue Shield of Oregon assent to, and join in, this petition for removal. Resident Advisory Board v. Tate, 329 F. Supp. 427 (E.D. PA 1971).
6. Defendant is filing this Notice of Removal within the time period prescribed by 28 U.S.C. § 1446.
7. Pursuant to 28 U.S.C. § 1446(d), defendant will promptly file this Notice of Removal with the Clerk, Superior Court of Suffolk County, Commonwealth of Massachusetts, 90 Devonshire Street, Boston, Massachusetts 02109.

8. Pursuant to 28 U.S.C. §1446(d) defendant will serve a copy of this Notice of Removal upon counsel for plaintiff.

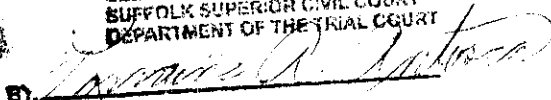
WHEREFORE, defendant petitions that the above action now pending in the Superior Court of Suffolk County, Commonwealth of Massachusetts, be removed therefrom to this Court.

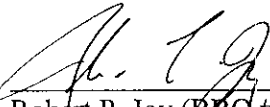
Date: July 27, 2004.

Respectfully Submitted:

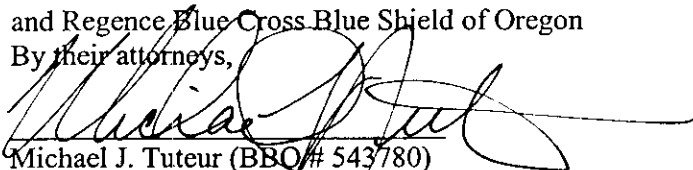
HEREBY ATTEST AND CERTIFY ON  
AUGUST 3, 2004 THAT THE  
FOREGOING DOCUMENT IS A FULL,  
TRUE AND CORRECT COPY OF THE  
ORIGINAL ON FILE IN MY OFFICE,  
AND IN MY LEGAL CUSTODY.

MICHAEL JOSEPH DONOVAN  
CLERK / MAGISTRATE  
SUFFOLK SUPERIOR CIVIL COURT  
DEPARTMENT OF THE TRIAL COURT

BY:   
ASSISTANT CLERK.

  
Robert P. Joy (BBO # 254820)  
Corinne L. Hood (BBO # 654311)  
**MORGAN BROWN & JOY, LLP**  
One Boston Place  
Boston, MA 02108  
(617) 523-6666  
(617) 367-3125 (fax)

Assented to:  
Blue Cross Blue Shield of Massachusetts, Inc.  
and Regence Blue Cross Blue Shield of Oregon  
By their attorneys,

  
Michael J. Tuteur (BBO # 543780)  
Russell W. Beck (BBO # 549194)  
Michael R. Pontrelli (BBO # 561031)  
Epstein Becker & Green, P.C.  
111 Huntington Avenue  
Boston Ma 02199  
(617) 392-4000  
(617) 392-4001(fax)

COMMONWEALTH OF MASSACHUSETTS  
SUFFOLK, ss. SUPERIOR COURT  
DEPT. OF THE TRIAL COURT

CHILDREN'S HOSPITAL  
CORPORATION,

Plaintiff,

v.

KINDERCARE LEARNING CENTERS,  
INC., BLUE CROSS BLUE SHIELD OF  
MASSACHUSETTS, INC., and  
REGENCE BLUE CROSS BLUE  
SHIELD OREGON  
Defendants.

Civil Action No.  
04-2959

2004 JUL 28 10 19

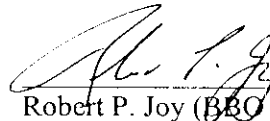
CLERK NOTICE OF REMOVAL

TO: Civil Clerks Office  
Suffolk County Superior Court  
90 Devonshire Street  
Boston, MA 02109

PLEASE TAKE NOTICE that the Defendants, in the above captioned matter, have on the 28<sup>th</sup> day of July 2004 filed in the United States District Court of the District of Massachusetts, its Notice of Removal of Action of the above-styled action from the Superior Court, Suffolk County, Commonwealth of Massachusetts (a copy of said Notice is attached hereto) to the United States District Court for the District of Massachusetts, together with copies of the Complaint filed by the Plaintiff in the Superior Court, Suffolk County, Commonwealth of Massachusetts.

Date: July <sup>HL</sup>28, 2004.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "R. P. Joy", written over a horizontal line.

Robert P. Joy (BBO # 254820)

Corinne L. Hood (BBO # 654311)

**MORGAN BROWN & JOY, LLP**

One Boston Place

Boston, MA 02108

(617) 523-6666

(617) 367-3125 (fax)

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

**SUPERIOR COURT  
DEPT. OF THE TRIAL COURT**

**CHILDREN'S HOSPITAL  
CORPORATION,**

**Plaintiff,**

**v.**

**KIDERCARE LEARNING CENTERS,  
INC., BLUE CROSS BLUE SHIELD OF  
MASSACHUSETTS, INC., and  
REGENCE BLUE CROSS BLUE  
SHIELD OREGON  
Defendants.**

**Civil Action No.  
04-2959**

**NOTICE TO COUNSEL OF REMOVAL OF ACTION TO FEDERAL COURT**

**TO: John D. Hanify, Esq.  
Hanify & King, P.C.  
One Beacon Street  
Boston, MA 02108**

PLEASE TAKE NOTICE that the Defendants, in the above captioned matter, have on the 28th day of July 2004 filed in the United States District Court of the District of Massachusetts, its Notice of Removal of Action of the above-styled action from the Superior Court, Suffolk County, Commonwealth of Massachusetts (a copy of said Notice is attached hereto) to the United States District Court for the District of Massachusetts, together with copies of the Complaint filed by the Plaintiff in the Superior Court, Suffolk County, Commonwealth of Massachusetts.

Date: July , 2004.

Respectfully Submitted:



---

Robert P. Joy (BBO # 254820)

Corinne L. Hood (BBO # 654311)

**MORGAN BROWN & JOY, LLP**

One Boston Place

Boston, MA 02108

(617) 523-6666

(617) 367-3125 (fax)

# Commonwealth of Massachusetts

SUFFOLK, ss.



SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION

No. 04-2959-C

Children's Hospital Corporation, Plaintiff(s)

v.  
KinderCare Learning Centers, Inc.,  
Blue Cross Blue Shield of Massachusetts, Inc. &  
Regence Blue Cross Blue Shield of Oregon, Defendant(s)

## SUMMONS

To the above-named Defendant:

You are hereby summoned and required to serve upon Theodore J. Folkman, Esq., of Hanify & King, Professional Corporation, an answer to plaintiff's attorney, whose address is One Beacon St., Boston, MA 02108, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at Boston either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Suzanne V. DeVecchio, Esquire, at Boston, the 6th day of July, in the year of our Lord two thousand and four.

*Michael Joseph Donovan*  
Clerk/Magistrate

NOTICE TO DEFENDANT - You need not appear personally in court to answer the complaint, but if you claim to have a defense, either you or your attorney must serve a copy of your written answer within 20 days as specified herein and also file the original in the Clerk's Office.

### NOTES.

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the notices of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.
3. TO PLAINTIFF'S ATTORNEY: PLEASE CIRCLE TYPE OF ACTION INVOLVED  
(1) TORT - (2) MOTOR VEHICLE TORT - (3) CONTRACT - (4) EQUITABLE RELIEF - (5) OTHER



Commonwealth of Massachusetts  
SUFFOLK SUPERIOR COURT

## Case Summary

## Civil Docket

SUCV2004-02959

## Childrens Hospital Corp v Kindercare Learning Centers Inc et al

<b>File Date</b>	07/06/2004	<b>Status</b>	Disposed: transfered to other court (dtrans)
<b>Status Date</b>	08/02/2004	<b>Session</b>	C - Civil C
<b>Origin</b>	1	<b>Case Type</b>	A01 - Services, labor, materials
<b>Lead Case</b>		<b>Track</b>	F

<b>Service</b>	10/04/2004	<b>Answer</b>	12/03/2004	<b>Rule12/19/20</b>	12/03/2004
<b>Rule 15</b>	12/03/2004	<b>Discovery</b>	05/02/2005	<b>Rule 56</b>	06/01/2005
<b>Final PTC</b>	07/01/2005	<b>Disposition</b>	08/30/2005	<b>Jury Trial</b>	Yes

## PARTIES

**Plaintiff**

Childrens Hospital Corp  
Active 07/06/2004

**Private Counsel 219880**

John D Hanify  
Hanify & King  
1 Beacon Street  
21st Floor  
Boston, MA 02108-3107  
Phone: 617-423-0400  
Fax: 617-423-0498  
Active 07/06/2004 Notify

**Defendant**

Kindercare Learning Centers Inc  
Served: 07/07/2004  
Served (answr pending) 07/15/2004

**Private Counsel 654311**

Corinne L Hood  
Morgan Brown & Joy  
1 Boston Place  
Suite 1616  
Boston, MA 02108-4472  
Phone: 617-523-6666  
Fax: 617-367-3125  
Active 08/02/2004 Notify

**Defendant**

Blue Cross Blue Shield of Mass Inc  
Served: 07/07/2004  
Served (answr pending) 07/15/2004

**Private Counsel 254820**

Robert P Joy  
Morgan Brown & Joy  
1 Boston Place  
Suite 1616  
Boston, MA 02108-4472  
Phone: 617-523-6666  
Fax: 617-367-3125  
Active 08/02/2004 Notify

**Defendant**

Regence Blue Cross Blue Shield of Oregon  
Served: 07/06/2004  
Served (answr pending) 07/13/2004

## ENTRIES

<b>Date</b>	<b>Paper</b>	<b>Text</b>
07/06/2004	1.0	Complaint & Jury demand

Commonwealth of Massachusetts  
SUFFOLK SUPERIOR COURT  
Case Summary  
Civil Docket

08/02/2004  
03:12 PM

SUCV2004-02959

Childrens Hospital Corp v Kindercare Learning Centers Inc et al

Date	Paper	Text
07/06/2004		Origin 1, Type A01, Track F.
07/06/2004	2.0	Civil action cover sheet filed
07/08/2004	3.0	Plaintiff's Ex Parte Motion for Appointment of Dewsnap & Associates as Special Process Server & Allowed (Cratsley,J) (Dated 7/7/04)
07/13/2004	4.0	Affidavit of compliance with long-arm statute with proof of service Defendant Blue Cross Blue Shield of Oregon on 7/6/04

MAS-20030912

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**Commonwealth of Massachusetts  
SUFFOLK SUPERIOR COURT**

**Case Summary  
Civil Docket**

**SUCV2004-02959****Childrens Hospital Corp v Kindercare Learning Centers Inc et al**


Date	Paper	Text
07/06/2004		Origin 1, Type A01, Track F.
07/06/2004	2.0	Civil action cover sheet filed
07/08/2004	3.0	Plaintiff's Ex Parte Motion for Appointment of Dewsnap & Associates as Special Process Server & Allowed (Cratsley,J) (Dated 7/7/04)
07/13/2004	4.0	Affidavit of compliance with long-arm statute with proof of service on out of state defendant Blue Cross Blue Shield of Oregon on 7/6/04
07/15/2004	5.0	SERVICE RETURNED (summons): Kindercare Learning Centers Inc (Defendant) by delivering in hand to Yvette Concepcion, Process Clerk c/o CT Corp., on 7/7/04
07/15/2004	6.0	SERVICE RETURNED (summons): Defendant Blue Cross Blue Shield of Mass Inc, service made on July 07, 2004 (in hand) to Sue Malzone, Adm Asst,
08/02/2004		Certified copy of petition for removal to U. S. Dist. Court of Deft. Kindercare Learning Center U. S. Dist.#(04-11676PBS).
08/02/2004		Case REMOVED this date to US District Court of Massachusetts

**EVENTS**

HEREBY ATTEST AND CERTIFY ON  
AUGUST 3, 2004

THAT THE  
FOREGOING DOCUMENT IS A FULL,  
TRUE AND CORRECT COPY OF THE  
ORIGINAL ON FILE IN MY OFFICE,  
AND IN MY LEGAL CUSTODY.

**MICHAEL JOSEPH DONOVAN  
CLERK / MAGISTRATE  
SUFFOLK SUPERIOR CIVIL COURT  
DEPARTMENT OF THE TRIAL COURT**

BY: 

ASSISTANT CLERK.